



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE
AND JMFC., AT MADHUGIRI.**

Dated this the 20th day of September 2023.

PRESENT

**SMT.SHILPA.H.A.
B.A.L., LL.B.,
Prl. Senior Civil Judge & J.M.F.C.
Madhugiri.**

O.S No.135/2022

**PLAINTIFFS: 1. S.D. Manjunatha
S/o Late Doddegowda,
Aged about 37 years
Residing at Singanahalli
village, Kodigenahalli Hobli,
Madhugiri Taluk. And others**

(By Sri. S.R.R., Advocate)

-Vs-

**DEFENDANTS: 1. D. Sreenivasaiah,
S/o Dasegowda,
Aged about 70 years,
Residing at Singanahalli
village, Kodigenahalli Hobli,
Madhugiri Taluk. And another.**

(By Sri. P.D.T., Advocate)

**I.A.No.I/2023****APPLICANT: S.D. Manjunath****V/s****OPPONENT: D. Sreenivasaiah****: ORDER ON I.A.No.I:**

The counsel for the plaintiffs has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC seeking an order of temporary injunction restraining the defendant No.1 and 2 and their agents, servants, or anybody claiming under them from alienating the suit schedule properties till the disposal of the suit.

2. The Plaintiff No.1 has sworn to an affidavit in support of this I.A and contended that he along with other plaintiffs have filed the suit for partition and separate possession. The suit schedule properties are the ancestral and joint family properties of themselves and defendants, there is no partition between them. Defendants have no exclusive right, title over the suit properties, without the knowledge



of the plaintiffs, defendants are trying to alienate the suit schedule properties in favour of strangers in order to defeat and defraud the plaintiffs right over the suit schedule properties. If the I.A. is allowed, balance of convenience lies in favour of plaintiffs, at the same time if the I.A. is dismissed, the plaintiffs will be put to much hardship and injustice which cannot be compensated in terms of money. Hence, prays to grant an order of temporary injunction.

3. On the other hand, defendant No.1 has filed written statement and adopted the same as objection to the I.A. and denied that suit schedule properties are the ancestral and joint family properties and plaintiffs and defendants are the members of Hindu Undivided Joint Family. Suit item No.2 to 4 and 7 were the ancestral and joint family properties, but about long back they are divided among the plaintiffs father and defendants and therefore there is no need to once again divide the properties which were already divided. Item No.6 is neither the ancestral property nor joint family property, but it is the joint property of defendants and they are its absolute owners and



possessors and therefore the plaintiffs have no right, title over the same. Suit item No.1 belongs to one Venkataramappa .J. S/o late Julappa and he acquired the same through registered sale deed dated 05.01.1966 and continued its possession and enjoyment. After his death, his family members and legal heirs are in occupation and possession of the same. Therefore, suit item No.1 is no longer either ancestral or joint family property of plaintiffs and defendants and hence the suit is bad for misjoinder of property. If the court comes to the conclusion that suit item No.2 to 4 and 7 are not subjected for division, defendant No.1 has no objection to decree the suit for partition with respect to those four properties. Suit item No.5 is also neither the joint family property nor ancestral property and it originally belongs to one M.V. Venkataravanappa S/o Doddannanavara Venkatappa and he came to acquire the same through registered sale deed dated 30.10.1996 and he continued to be in possession and enjoyment for some time and in the year 1969 for his dire necessities of money and to discharge loan, he had offered to sell an extent of 2.04 ½ guntas in suit



item No.5 in favour of defendant No.1 and accordingly defendant No.1 had purchased the same through unregistered sale deed dated 20.09.1969. Hence, prays to dismiss the suit against item No.1, 5 and 6.

4. Heard and perused the materials placed before me.

5. The points that arise for my consideration are as follows;

:POINTS:

1. Whether the plaintiffs have made out prima-facie case to grant temporary injunction in their favour?
2. Whether balance of convenience lies in favour of the plaintiffs?
3. Whether the irreparable loss or hardship will be caused to the plaintiffs, if injunction is not granted?
4. What order?



6. My findings to the above points are as follows;

Point No.1 : In the Affirmative

Point No.2, 3 : In the Affirmative

**Point No.4 : As per final order
for the following;**

:REASONS:

7. **POINT No.1:** Plaintiffs have filed the suit for partition and separate possession seeking half share in the suit schedule properties. It is the case of the plaintiffs that suit schedule properties are the ancestral and joint family properties of themselves and defendants and the same was acquired by plaintiffs grandfather by name Doddappa and after his death suit schedule properties was inherited by plaintiffs father. Now plaintiffs and defendants are in joint possession and enjoyment of the same. Defendant No.1 and 2 are trying to alienate the suit properties and defeat the rights of plaintiffs. Hence, plaintiffs have conveyed panchayath about one week back and demanded their respective share, but the



defendants have refused to effect partition. Hence, this suit and I.A.

8. In support of I.A.No.1, the Plaintiffs have produced some documents. On perusal of the G-Tree it goes to show that one Doddegowda S/o Thimmadasappa has two children by name Manjunatha and Suresh who are plaintiff No.1 and 2. On perusal of the M.R. No.10/96-97 it goes to show that the khatha of suit item No.2 to 4 was jointly mutated in the name of Srinivasaiah, Gangadharaiah S/o Dasegowda, Thimmadasappa S/o Doddappa, Doddegowda, Radhamma W/o Doddegowda. RTC of suit item No.1 jointly stands in the name of defendants and one Thimmadasappa i.e., father of plaintiff No.3. RTC of suit item No.2, 3 and 4 jointly stands in the name of defendants, plaintiff No.3 and Radhamma W/o Doddegowda i.e., plaintiffs mother. RTC of suit item No.5 and 6 stands in the name of defendants.

9. Defendant No.1 has taken contention that suit item No.2 to 4 and 7 were the ancestral and joint



family properties and the same has been partitioned about long back and suit item No.1, 5 and 6 are neither the ancestral nor the joint family properties and he has taken specific contention that suit item No.1 belongs to one Venkataramappa .J. S/o Late Julappa and after his death the same came to be mutated in the name his Lrs., and neither the plaintiffs nor the defendants have got any right over the same, but RTC of suit item No.1 jointly stands in the name of defendants and in column No.10 it is mentioned as ancestral property. The RTC of suit item No.5 and 6 jointly stands in the name of defendants and the same came to be mutated in their names through M.R.35/92-93. To substantiate the contention of defendants, they have not produced any documents. Though defendant No.1 has contended that suit schedule properties are partitioned about long back, they have not placed any single piece of paper to substantiate their contention. As per the admissions of defendant No.1, suit item No.2 to 4 and 7 are the ancestral properties and the same has been partitioned through metes and bounds. Suit item No.1 jointly stands in the name of father of plaintiff No.3



and defendant No.1 and 2. Similarly suit item No.5 and 6 are also jointly stands in the name of defendants. Since defendants have failed to produce any document to prove their contention, all the documents produced by the plaintiffs prima facie goes to show that suit schedule properties are the joint family properties. Since this is a suit for partition and Khatha of the suit schedule properties jointly stands in the name of plaintiffs mother and defendants, at this stage, if defendants alienate the suit properties it defeats the right of the plaintiffs and also leads to multiplicity of proceedings. Plaintiffs have made out prima facie case. Hence, if temporary injunction is granted balance of convenience lies in their favour, at the same time if the I.A. is rejected, plaintiffs will be put to irreparable loss and injury which cannot be compensated in terms of money. Hence, plaintiffs have made out prima facie case and accordingly, I answer Point No.1 in the **Affirmative.**

10. **POINTS No.2 & 3:** Both the points are interconnected in order to avoid repetition of facts they are taken together for discussion.



The plaintiffs have made out prima facie case in their favour, hence the balance of convenience also lies in their favour. If the temporary injunction is not granted, plaintiffs will be put to irreparable loss and injury and on the other hand, if the I.A. is allowed no hardship or injury will be caused to the defendants. Accordingly, I answer **Points No.2 and 3 in the Affirmative.**

11. **POINT No.4:** For the aforesaid reasons, I pass the following;

:ORDER:

I.A No.1 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC., is hereby allowed.

The defendant No.1 and 2, their agents, servants or anybody claiming under them are hereby restrained by an order of temporary injunction from alienating the suit schedule properties till the disposal of the suit.



No order as to cost.

(Dictated to the Stenographer transcribed, typed and printout taken by her, corrected by me and then pronounced in the open court on this the 20th day of September 2023)

**Sd/-
(SHILPA.H.A)
Prl. Senior Civil Judge & JMFC.,
Madhugiri.**